IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

OP.No. 5360 of 1999(K)

PETITIONER:

M/S. CHALISSERY SUPARI COMPANY,
CHALISSERY, PALAKKAD DISTRICT, REPRESENTED BY
P.M. AYISHAKUTTY, PARTNER.

BY ADV. SRI.JOSE JOSEPH

RESPONDENTS:
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1. THE ASST. COMMISSIONER (ASSMT.) II,
SALES TAX OFFICE, SPECIAL CIRCLE, PALAKKAD.

2. THE DEPUTY COMMISSIONER, COMMERCIAL TAXES,
PALAKKAD (FORMERLY AGRL. INCOMETAX & SALES TAX, PALAKKAD)

3. THE COMMISSIONER OF COMMERCIAL TAXES, TRIVANDRUM.

4. THE DEPUTY TAHSILDAR (RR), TALUK OFFICE, OTTAPALAM.

BY GOVERNMENT PLEADER SRI. G. SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 13/12/2006 THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER ON CMP 9122 OF 1999 IN OP 5360 OF 1999

DISMISSED

13.12.2006 SD/-C.N.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE NOTICE DATED 27.7.1994 ISSUED BY THE FIRST RESPONDENT.

EXT.P2 TRUE COPY OF THE PETITIONER'S OBJECTION DATED 30.8.1994 TO EXT.P1 NOTICE.

EXT.P3 TRUE COPY OF THE ORDER DATED 16.8.1994 OF THE SECOND RESPONDENT.

EXT.P4 TRUE COPY OF THE ORDER DATED 12.6.1998 OF THE SECOND RESPONDENT IN RP NO. 49/1994

EXT.P5 TRUE COPY OF REVISION PETITION FILED BEFORE THE THIRD RESPONDENT.

EXT.P6 TRUE COPY OF THE ORDER DATED 5.1.1999 OF THE THIRD RESPONDENT IN STRP NO.90/98

EXT.P7 TRUE COPY OF THE DEMAND NOTICE DATED 31.10.1998 ISSUED UNDER SECTION 7 OF THE RR ACT.

EXT.P8 TRUE COPY OF THE DEMAND NOTICE DATED 31.10.1998 ISSUED UNDER SECTION 34 OF THE RR ACT.

RESPONDENTS' EXHIBITS: NIL

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 5360 OF 2006

Dated this the 13th day of December, 2006

JUDGMENT

Heard counsel for the petitioner and Government Pleader. Petitioner is challenging Ext.P6 order whereunder the Commissioner has sustained penalty levied under Section 45A and modified by the first revisional authority. Petitioner, a dealer in arecanut, purchased stock in Kerala, consigned the same to outside the State and retained the same with it's agents for sale. Arecanut being an item taxable at the point of last purchase in the state attracts tax on the purchases made by the petitioner within the State and transferred outside the State for sale in those States. It was noticed that petitioner has suppressed massive turnover in the returns filed and consequently penalty was levied at double the amount of tax. However, the Deputy Commissioner in first revision reduced the penalty to equal the amount of tax, which is sustained by the Commissioner in second revision against which this O.P. is filed.

2. Counsel for the petitioner contended that provision

introducing tax on last purchase of goods stock transferred outside the State and retained by the selling agents, was introduced only on 19.2.1988. This provision was under challenge by some other dealers and this Court had granted stay. Because of the stay granted by this Court in other cases, petitioner did not pay tax on goods stock transferred and retained with the selling agents outside the State, is the case of the petitioner. I am unable to accept the contention of petitioner for more than one reason. In the first place petitioner has not challenged the amendment and amendment came into force one year before the relevant year, that is, 1988-89, as against the suppression of turnover found in this case for the year 1989-90. Further, petitioner's case of non-disclosure of turnover in the returns on account of stay granted by this Court in other cases was not mentioned in the returns or through any other communication. Therefore penalty is rightly levied for attempted evasion of tax. However, there is one redeeming factor in favour of the petitioner, that is, turnover was adopted by the department from the accounts maintained by the petitioner. In the circumstances, I feel petitioner is entitled to quantum reduction.

Accordingly penalty levied and sustained is modified by reducing it to 25% of the tax payable on the turnover. The officer will ensure that tax on the suppressed turnover is recovered besides penalty as above.

O.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge